

REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 14-24 will be pending in the application of which claims 23 and 24 have been withdrawn from consideration as directed to non-elected subject matter. As the examiner will note, claims 1-13 have been canceled (without prejudice or disclaimer) and the dependencies of claims 17-22 adjusted and based upon claim 14 as the only independent claim now under consideration.

By the deletion of claims 1-13 the rejections on pages 2-4 of the Official Action are rendered moot leaving for consideration only the rejection of claims 14-22 as being unpatentable over Gudas et al in view of Collier et al as stated on pages 5-7 of the Action.

Claim 14 contains a combination of the feature "topical composition" with a specific HDAC inhibitor. This combination of a topical composition with a certain HDAC inhibitor is not disclosed in Gudas et al, even if one of the administration routes stated on page 6, lines 24 to 27 of Gudas et al would imply a topical composition (which it does not).

Gudas et al discloses that administration of both an HDAC inhibitor and a retinoid is effective in the treatment of solid tumors *in vivo* (page 4, lines 8 to 10). The application of the combination of HDAC inhibitor and retinoid is either by injection or orally (page 6, line 16 to page 7, line 11). Topical application and topical compositions are not disclosed anywhere in Gudas et al. The preferred HDAC inhibitor of Gudas et al, which is also used in all examples of the document, is Trichostatin A, not a compound as defined in claim 14 of the present application.

Contrary to Gudas, the present application is not directed to tumor therapy at all but tries to solve the problem of finding cosmetic preparations for treating, reducing or preventing wrinkles, thickening of the epidermis and preventing and treating of hair loss and other conditions which are observed with skin due to environmental or other external influences due to age (present application, page 5, fifth paragraph). Thus, the technical field of the present application is completely different from the technical field of Gudas et al, and the problem that is solved in the present application has nothing to do with the problem on which Gudas et al is based.

The difference between the subject matter claimed in the present application and the subject matter disclosed in Gudas et al is that Gudas et al does not disclose topical compositions

and in particular does not disclose topical compositions containing a certain HDAC inhibitor as defined in claim 14 in combination with a retinoid. The problem solved by providing such a topical composition is as stated in the present application, namely obtaining an advantageous composition for treating wrinkles, etc. as indicated above.

From Gudas et al a skilled person might conclude that combinations of HDAC inhibitors with retinoids are active in treating tumors when administered by injection or orally, but this document is not directed to the treatment of wrinkles or the treatment of skin aging etc. at all. The focus of this document lies in the use of TSA which is systemically administered with a retinoid for tumor therapy. From this disclosure of Gudas et al a skilled person could not have concluded that the combination of very specific HDAC inhibitors as defined in present claim 14 with a retinoid when applied topically is very useful for providing certain cosmetic effects, as indicated in the present application. Of course, a skilled person could not have assumed either that such a combination of a certain HDAC inhibitor with a retinoid when applied to the skin in the form of a topical composition shows a synergistic effect. Thus, it becomes evident that the subject matter of the present application is not suggested by either of the applied references.

The Official Action acknowledges that Gudas et al does not explicitly teach the composition as a topical composition and for this defect relies upon the disclosures of Collier et al, particularly the passage at page 4, lines 10-25. Collier is concerned with various skin conditions and in "topical medicaments" for use in the treatment of skin conditions in particular conditions such as psoriasis, atopic dermatitis, neuro-dermatitis, eczema, contact dermatitis, acne, leprosy, seborrheic dermatitis, lupus and urticaria as well as skin cancer such as melanoma or scalp psoriasis or the like.

While it was true that the passage referred to in the Official Action does describe various topical compositions, these are therapeutic compositions and not cosmetic compositions or compositions having a cosmetic effect relating to wrinkles or dry skin or sensitive skin or other conditions of the type to which the present invention is directed and as specified in, for instance, claim 24. Indeed, claim 22 itself specifies a cosmetic composition.

Applicants submit that one having ordinary skill in this art would not consult a document such as Collier et al for information on how to prepare topical compositions especially cosmetic compositions of the type to be used with an HDAC inhibitor of the type defined in claims of the

present application.

A comparative example is contained in the present application as filed. In response to the examiner's "in the absence of evidence to the contrary" comment (page 7, line 2) and in order to supplement and expand this evidence, attached is the evidentiary declaration of Dr. Jochen Klock, one of the inventors herein, made July 29, 2009 which compares the effect of retinol, 4-phenyl butyric acid and 4-phenyl acetic acid, each used as a single active ingredient, with the claimed combinations of retinol + 4-phenyl butyric acid and retinol + 4-phenyl acetic acid. It can be seen that the claimed combinations have a significant synergistic effect on skin cells which is not foreshadowed by any prior art document.

Even assuming *arguendo* that the two documents are properly combined, one having ordinary skill in the art would not expect to see the unexpected effectiveness of stimulating the differentiation process of skin and means to slow this process to provide improved epidermal thickness as shown in the attached evidence as well as information contained in the application as filed.

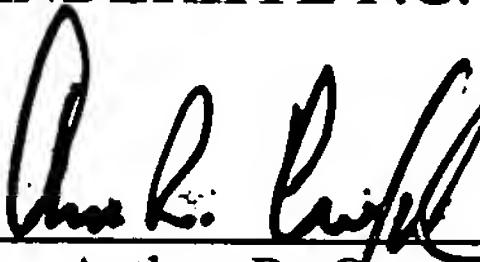
For the above reasons it is respectfully submitted that the claims are directed to patentable subject matter. Applicants also request that withdrawn claims 23 and 24 be rejoined to be further examined and allowed together with the composition claims.

Should the examiner require further information, please contact the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Arthur R. Crawford
Reg. No. 25,327

ARC:eaw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100